STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2012-108

March 14, 2012

ORPC MAINE, LLC
Request for Certification for RPS Eligibility

ORDER GRANTING NEW RENEWABLE RESOURCE CERTIFICATION

WELCH, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

The ORPC Maine's Cobscook Bay Tidal Energy Facility is certified as a Class I new renewable resource that is eligible to satisfy Maine's new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B) of the Commission rules.

II. BACKGROUND

A. New Renewable Resource Portfolio Requirement

During its 2007 session, the Legislature enacted an Act To Stimulate Demand for Renewable Energy (Act). P.L. 2007, ch. 403 (codified at 35-A M.R.S.A. § 3210(3-A)). The Act added a mandate that specified percentages of electricity that supply Maine's consumers come from "new" renewable resources. Generally, new renewable resources are renewable facilities that have an in-service date, resumed operation or were refurbished after September 1, 2005. The percentage requirement starts at one percent in 2008 and increases in annual one percent increments to ten percent in 2017, unless the Commission suspends the requirement pursuant to the provisions of the Act.

As required by the Act, the Commission modified its portfolio requirement rule (Chapter 311) to implement the "new" renewable resource requirement. *Public Utilities Commission Amendments to Portfolio Requirement Rule (Chapter 311),* Docket No. 2007-391, Order Adopting Rule and Statement of Factual and Policy Basis (Oct. 22, 2007) (Order Adopting Rule). The implementing rules designated the "new" renewable resource

¹ Maine's electric restructuring law, which became effective in March 2000, contained a portfolio requirement that mandated that at least 30% of the electricity to supply retail customers in the State come from eligible resources, which are either renewable or efficient resources. 35-A M.R.S.A. § 3210(3). The Act did not modify this 30% requirement.

requirement as "Class I"² and incorporated the resource type, capacity limit and the vintage requirements as specified in the Act. The rules thus state that a new renewable resource used to satisfy the Class I portfolio requirement must be of the following types:

- fuel cells;
- tidal power;
- solar arrays and installations;
- wind power installations;
- geothermal installations;
- hydroelectric generators that meet all state and federal fish
- passage requirement; or
- biomass generators, including generators fueled by landfill gas.

In addition, except for wind power installations, the generating resource must not have a nameplate capacity that exceeds 100 MW. Finally, the resource must satisfy one of four vintage requirements. These are:

- 1) renewable capacity with an in-service date after September 1, 2005;
- 2) renewable capacity that has been added to an existing facility after September 1, 2005;
- 3) renewable capacity that has not operated for two years or was not recognized as a capacity resource by the ISO-NE or the NMISA prior to September 1, 2005, and, after September 1, 2005, has resumed operation or has been recognized by the ISO-NE or NMISA as a capacity resource; or
- 4) renewable capacity that has been refurbished after September 1, 2005 and is operating beyond its useful life or employing an alternate technology that significantly increases the efficiency of the generation process.

The implementing rules (Chapter 311, § 3(B)(4)) establish a certification process that requires generators to pre-certify facilities as a new renewable resource under the requirements of the rule and provides for a Commission determination of resource eligibility on a case-by-case basis.³ The rule contains the information that must be included in a petition for certification and specifies that the Commission shall

² The "new" renewable resource requirement was designated as Class I because the requirement is similar to portfolio requirements in other New England states that are referred to as "Class I." Maine's pre-existing "eligible" resource portfolio requirement is designated as Class II.

³ In the Order Adopting Rule at 6, the Commission noted that a request for certification can be made at any time so that a ruling can be obtained before a capital investment is made in a generation facility.

provide an opportunity for public comment if a petitioner seeks certification under vintage categories 2, 3 and 4. Finally, the rule specifies that the Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

B. <u>Petition for Certification</u>

On March 9, 2012, ORPC Maine, LLC, subsidiary to the Ocean Renewable Power Company, filed a petition to certify its Tidal Energy Facility (Facility) as a Class I renewable resource. The 900 kW hydrokinetic Facility is located off the northern shoreline of Lubec, Maine in Cobscook Bay and is fueled by tidal currents. The petition states that the first phase of the Facility is anticipated to commence commercial operation on July 1, 2012.

III. DECISION

The Commission has delegated to the Director of the Electric and Gas Division the authority to certify generation facilities as Class I new renewable resources pursuant to Chapter 311, § 3(B) of the Commission rules. *Public Utilities Commission Delegation of Authority to Certify Class I New Renewable Resources*, Docket No. 2008-184, Delegation Order (April 23, 2008). Based on the information provided by ORPC Maine, I conclude that the Facility satisfies the resource type, capacity limit and vintage requirements of the rule. The Facility is fueled solely by tidal power, its capacity does not exceed 100 MW, and it will have commenced commercial operations after September 1, 2005. Accordingly, the ORPC Maine Cobscook Bay Facility is hereby certified as a Class I new renewable resource that is eligible to satisfy Maine's new renewable resource portfolio requirement pursuant to Chapter 311, § 3(B)(3)(a) of the Commission rules. ORPC Maine, or the Facility's successive owner, shall provide timely notice to the Commission of any material change in the operation of the facility from that described in the petition filed in this proceeding.

BY ORDER OF THE DIRECTOR OF THE ELECTRIC AND GAS
UTILITY INDUSTRIES

Faith Huntington